

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Rep. Morgan Meyer
Chair, Ways and Means Committee
Texas House of Representatives
Austin, TX

RE: **Opposition to HB 2889 creating a New Tax on Travel Agents and Websites**

Dear Chair Meyer and members of the committee:

We respectfully ask that you **not** advance HB 2889 which creates a new tax on services provided by travel agents and online travel companies.

HB 2889 imposes a new tax on the fees these travel agents charge for researching, comparing, and booking rooms for travelers. Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But under HB 2889, this approach would backfire since the new service tax would be paid *only* by Texans– *not by travelers* from out-of-state.

Imposes a new tax on Texans

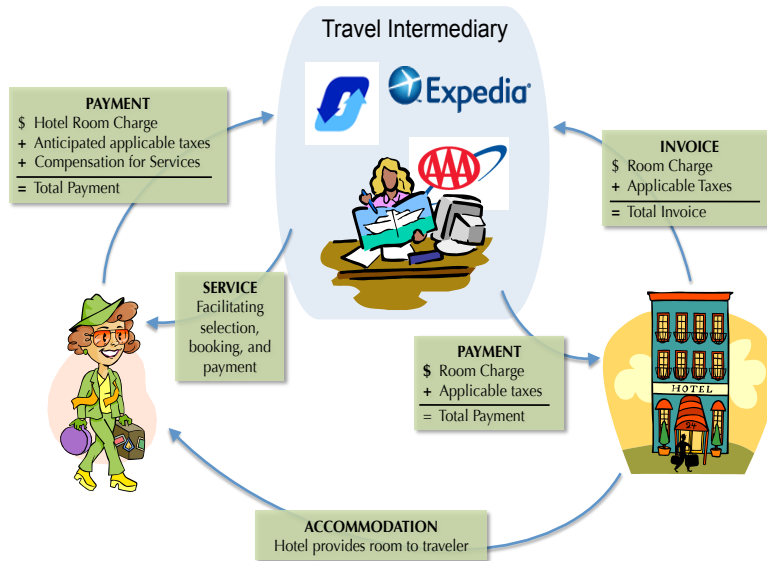
Today, Texas does not impose sales tax or lodging tax on service fees charged by travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel.

But HB 2889 would impose a **new tax** on these service fees provided by travel agents and online travel companies, a tax that is passed on to your constituents.

Nearly all travel agents and travelers rely upon online services to research, compare, and book reservations

From our work on this issue in states and at NCSL, it's clear there is some misunderstanding about travel reservation services and taxes. The chart below shows the flow of services, taxes, and payments in a typical transaction where a traveler uses a travel agent or online travel company to research and book a hotel reservation.

As shown in the chart, travel agents and online travel companies are providing a *service* to travelers. These services include comparisons of rates and amenities at multiple hotels, plus facilitation in making the reservation, processing the payment, and sending charges and applicable taxes to the hotel operator. Clearly, this facilitation service is distinct from the room provided by the hotel where the traveler eventually stays.



Creates a new tax on travel service fees that would only apply when *Texans* book their travel

The new tax imposed on booking service fees by HB 2889 would impact only Texas’s citizens and businesses. That’s because of the rules for determining the source jurisdiction for taxable services – when a tourist uses a travel service, the reservation service fee is sourced to the traveler’s home location – not to the traveler’s destination.

Under Texas sales and use tax law,

(f) Service benefit location. **If both the information service provider and the customer are located in Texas, Texas tax is due.**¹

For example, say two tourists are booking a hotel room in Texas. One lives in San Francisco, the other in Waco. The California tourist would *not* pay the tax created by HB 2889 when they booked through a travel agent since they received their online booking services outside of Texas.² But, the tourist living in Hilo who books through a travel agent *would* pay the tax created by the HB 2889.

This new tax would therefore only apply to services provided to Texas-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Texas hotels.

This new tax on service fees would only be collected by Texas-based travel websites

Because of Texas’s sourcing laws on services (see above), the requirement to collect this new tax on booking services could *only* apply to travel agents and websites that have a physical presence in Texas.

As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Texas hotel operator. But out-of-state travel agents would not be required

¹ 34 Texas Administrative Code § 3.342 (f). See

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&tac=&ti=34&pt=1&ch=3&rl=342](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&tac=&ti=34&pt=1&ch=3&rl=342)

² Note that the out-of-state tourist still pays the Texas occupancy tax when they book the room.

to collect this new tax on service fees for providing reservation services at the time that travelers book their hotel.

Minimal revenue generated

For reasons explained above, every state, city, and county that has enacted a similar new tax has failed to gain the anticipated tax revenue.

First, as discussed above, the service taxes could not be imposed on any out-of-state traveler. Second, Texas tax collectors do not have authority to force out-of-state travel agents to collect these new service taxes since states can only impose collection obligations on businesses with a physical presence.

So, when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Texas's travel agencies and travel websites.

HB 2889 is against model policy of the American Legislative Exchange Council (ALEC)

The American Legislative Exchange Council (ALEC) has adopted two model acts that make clear hotel and lodging taxes should be applied only on the amount received by the hotel – and not applied on the service fees charged by travel agents and online marketplaces.

ALEC's *Uniform Standard for Lodging Taxes Act* says:

“Sales price’ is the amount received by the Hotel Operator”

...

(2) Nothing in this part shall be construed to impose the tax on the separately stated service fee imposed by the online lodging marketplace on an online lodging transaction.

ALEC's *Travel Agent Tax Fairness Act* clarifies that:

“that taxes imposed as a sales tax on a hotel room and/or hotel tax or occupancy tax shall apply only to the amounts received by hotel operators, this legislation will promote continued growth in travel and tourism.

Avoid the conflation of travel services with lodging providers

By maintaining the true distinction between travel service providers and hotel operators, you can help the Texas travel and tourism industry focus on serving travelers and creating jobs – not on collecting nominal new taxes from the state's own citizens.

Instead of passing HB 2889 we suggest amending it to clarify when an occupancy tax applies. We suggest substituting the existing bill text with this language from Missouri law:

“Any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations, whether imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts actually received by the operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.

Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility. ...

This section is intended to clarify that taxes imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in the statutes authorizing such taxes.”³

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President and General Counsel, NetChoice
NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

³ Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).

TRAVEL AGENT TAX FAIRNESS ACT

Summary

This legislation establishes a sensible framework to eliminate confusion and controversy in the imposition of sales and hotel occupancy taxes on services provided by travel agents and other travel intermediaries. The legislation clarifies that a travel agent service which helps travelers to research, compare, and book hotel reservations is not subject to those taxes that are imposed on hotel operators for the provision of a room. By clarifying that taxes imposed as a sales tax on a hotel room and/or hotel tax or occupancy tax shall apply only to the amounts received by hotel operators, this legislation will promote continued growth in travel and tourism.

Model Policy

Section 1. {Title} This Act may be cited as the “Travel Agent Tax Fairness Act.”

Section 2. {Legislative Findings} The Legislature finds that:

(A) Travel agents and online travel companies provide valuable services to travelers, showing comparisons of rates and amenities offered by multiple, competing hotel operators.

(B) These facilitation services are distinct from the provision of a room by the hotel where the traveler eventually stays.

(C) Travelers rely on community travel agents and online travel agents to research, compare, and book reservations.

(D) Sales taxes on hotel room and hotel occupancy taxes should not be imposed on services provided by travel agents and online travel companies.

Section 3. {General Rule}

(A) Notwithstanding any other provision of law to the contrary, any tax imposed on or collected in relation to any transient accommodations, whether imposed as a sales tax, a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by the operator of a hotel,

motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.

(B) Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility.

(C) This section is intended to clarify that taxes imposed as a sales and/or hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in statutes authorizing such taxes.

Section 4. {Effective Date} This Act will become effective immediately upon signature by the Governor.

Approved by ALEC Board of Directors on September 19, 2010. Adopted by ALEC Communications and Technology Task Force and the Tax and Fiscal Policy Task Force at the ALEC Annual Meeting on Thursday July 23, 2015 and Friday, July 24, 2015. Reapproved by ALEC Board of Directors on September 4, 2015.

UNIFORM STANDARD FOR LODGING TAXES ACT

Section 1. Definitions

[Appropriately designated section number] of the statutes is created to read:

(1) “Hotel” means any structure or space, or any portion thereof, that:

(a) Is occupied, or intended or designed for occupancy, by transients for dwelling, lodging, or sleeping purposes; and

(b) Accepts on-site reservations for accommodations;

(2) “Hotel operator” means the individual or individuals operating the hotel, whether as owner, lessee or otherwise;

(3) “Local governing body” means the legislative body of a municipal, metropolitan, or county government;

(4) “Department” means the department of revenue;

(5) “Occupancy” means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in a hotel or online lodging unit;

(6) “Online lodging marketplace” or “marketplace” means any person or entity that provides a digital platform for compensation, through which a third party offers to rent an online lodging unit to an occupant;

(7) “Online lodging operator” means any person or entity engaged in the business of renting to an occupant any online lodging unit offered through an online lodging marketplace;

(8) “Online lodging transaction” or “transaction” means any transaction in which there is a charge to an occupant by an online lodging operator for the occupancy of any online lodging unit;

(9) “Online lodging unit” or “unit” means any structure, or a portion thereof, used by an online lodging operator to provide room or space that is suitable or intended for occupancy by an occupant for dwelling, sleeping, or lodging purposes, in exchange for a charge to the occupant for the occupancy;

(10) “Person” means any individual, or group of individuals, that occupies the same room or unit;

(11) “Sales price” is the amount received by the Hotel Operator; and

(12) “Transient” means any person who exercises occupancy or is entitled to occupancy of any unit for a period of less than thirty (30) continuous days.

Section 2. Statewide Lodging Tax Created

[Appropriately designated section number] of the statutes is created to read:

(1) There shall be a tax upon the privilege of occupancy in any hotel or online lodging unit by any transient. The tax shall be an amount equal to:

(a) [Insert number] percent ([X]%) of the sales price charged to the occupant by the hotel or online lodging unit operator for occupancy in the hotel or online lodging unit for any county in which the hotel or unit is located; and

(b) [Insert number] percent ([X]%) of the sales price charged to the occupant by the hotel or online lodging unit operator for occupancy in the hotel or online lodging unit for any city in which the hotel or unit is located; or

(c) [Insert number] that is equal to sub. (a) and (b)] percent ([X]%) of the sales price charged to the occupant by the hotel or online lodging operator for occupancy in the hotel or online lodging unit in any county having a metropolitan form of government.

(2) Nothing in this part shall be construed to impose the tax on the separately stated service fee imposed by the online lodging marketplace on an online lodging transaction.

(3) No online lodging operator shall be subject to the taxes imposed by this section with respect to any online lodging transaction for which the online lodging operator has received written notice or documentation from an online lodging marketplace that such marketplace has paid or will pay the taxes imposed by this section on such transactions. Any notice received under this subsection shall be proof sufficient regarding any liability of an online lodging operator for such taxes.

(4) The tax shall be collected and remitted by the hotel operator or online lodging marketplace, and administered by the department, in the same manner as provided by [insert statutory reference to the sales and use tax statutes] with respect to the sales and use tax.

(5) Hotel operators, online lodging operators and online lodging marketplaces that collect the tax pursuant to this part shall be subject to the administration and enforcement provisions set out in [insert statutory reference to the administration and enforcement sections of the sales and use tax statutes].

(6) Taxes collected pursuant to this part shall be distributed on a monthly basis by the department to the applicable local governing body in which the hotel or unit was located and the tax was collected. The department may deduct an administration fee of one and one hundred twenty-five thousandths percent (1.125%) of the collected tax to cover its expenses of administering the collection and distribution of the tax.

(7) The taxes received by the local governing body from the department may be used for purposes authorized by existing law.

Section 3. Local Governing Body Lodging Tax Repealed

- [Insert statutory reference] is repealed. All taxes levied pursuant to the authority granted by this section are null and void upon the effective date of this legislation.

NOTE: This section repeals the local lodging tax authorization statute and makes null and void all lodging taxes imposed by local governing bodies pursuant to the authority granted by the section. This is necessary to enact the statewide lodging tax instead.

NOTE: For purposes of this model policy, it is recommended that the lodging tax rate be equal to the state's sales and use tax rate or, if the state does not have a sales and use tax, not greater than five percent (5%).

Adopted by the Task Force on Communications and Technology and the Task Force on Tax and Fiscal Policy at the Annual Meeting, July 28, 2016.

Approved by the ALEC Board of Directors, September 12, 2016.